IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

Bill G. Nichols, on behalf of himself and all others similarly situated, Plaintiff, v. Chesapeake Operating, LLC, and Chesapeake Exploration, LLC Defendants.	)))))))))))))	Case No. CIV-16-1073-M

JOINT STATUS REPORT AND DISCOVERY PLAN

Date of Rule 26(f) Conference: October 21, 2016
Date of Scheduling Conference: October 31, 2016

Appearing for Plaintiff, Nichols:

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Plaintiff's Name and Telephone Number: Bill G. Nichols
Counsel will have Mr. Nichols's phone number at the status conference in the event it is needed.

Appearing for Defendants:

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Name of Representative for Defendants: Fred Gipson
Counsel will have Mr. Gipson's phone number at the status conference in the event it is needed.

JURY TRIAL DEMANDED ___X____ NON-JURY TRIAL _____

1. BRIEF PRELIMINARY STATEMENT.

Defendants Chesapeake Exploration, LLC and Chesapeake Operating, LLC lease minerals, operate oil and gas wells, and market production attributable to operating and non-operating interests in wells located within the State of Oklahoma, and pay royalty to the Plaintiff and the putative class. Plaintiff is a royalty owner in an oil and gas well operated by Chesapeake Operating. Plaintiff brought this action as the representative of a putative Class of royalty owners who are Oklahoma Residents (as defined by a four-part test appearing in the class definition) pursuant to Fed. R. Civ. P. 23 (a) and (b)(3).

Plaintiff claims that Defendants improperly reduced royalty owner revenue by charging Oklahoma royalty owners for midstream service fees and volumetric reductions associated with gathering, compression, dehydration, treating, and processing ("GCDTP") services in violation of Oklahoma law. Plaintiff purports to bring these claims on behalf of himself and a class of all other similarly situated Oklahoma citizens.

Defendants deny Plaintiff's claims Defendants further contend that they have remitted royalties owed Plaintiff and do not owe any additional royalty payments to Plaintiff or other purported class members.

2. JURISDICTION.

This case was removed from state court. Defendants contend jurisdiction exists under the Class Action Fairness Act, 28 U.S.C. § 1332(d) and 28 U.S.C. § 1453. Plaintiff has moved to remand the case to state court (docket no. 11) and, alternatively, moved to abstain under the home state exception to CAFA or to obtain jurisdictional discovery (docket no. 12).

3. STIPULATED FACTS.

a. Chesapeake Operating, LLC (f/k/a Chesapeake Operating, Inc.) is a limited liability company organized under the state laws of Oklahoma, with its principal place of business in Oklahoma City, OK.

b. Chesapeake Exploration, LLC is a limited liability company organized under the state laws of Oklahoma, with its principal place of business in Oklahoma.

c. For purposes of diversity jurisdiction under CAFA, Chesapeake Operating, LLC and Chesapeake Exploration, LLC are citizens of Oklahoma.

d. Chesapeake Operating operates certain oil and gas wells within the State of Oklahoma.

e. Plaintiff has interests in a well in Oklahoma operated by Chesapeake Operating.

f. The number of Class members of the proposed plaintiff class exceeds 100.

4. CONTENTIONS AND CLAIMS FOR DAMAGES OR OTHER RELIEF SOUGHT.

A. **Plaintiff**:

1. Plaintiff contends that under Oklahoma law a royalty owner bears no costs related to transforming raw gas into marketable condition (the GCDTP Services costs mentioned above) absent specific language in the oil and gas lease authorizing the lessee to deduct the specific cost from the royalty.

2. Plaintiff contends that Chesapeake knowingly made improper payment of royalties to the Class because Chesapeake knew it or those that it hired were deducting GCDTP service costs from revenues used to pay royalty owners.

3. Chesapeake pays royalty on the net gas contract value, not the gross value of the valuable constituents taken from Class Wells.

4. Plaintiff, after discovery, will satisfy all of the requirements for class certification, and to prevail on the merits. *See also* more complete contentions and relief in the Petition (docket no. 1-1).

B. Defendant:

1. Defendants deny Plaintiff's claims and contentions.

2. Defendants assert they have properly calculated and paid royalty to Plaintiff and the proposed class members.

3. Defendants assert the Court has jurisdiction under CAFA and that removal was proper.

4. Defendants assert that Plaintiff's claims may be barred in whole or in part by the affirmative and other defenses asserted in Defendants' Answer [Doc. #1-4].

5. APPLICABILITY OF FED. R. CIV. P. 5.1 AND COMPLIANCE.

This case contains no constitutional challenge to a statute so Fed. R. Civ. P. 5.1 does not apply.

6. MOTIONS PENDING AND/OR ANTICIPATED.

a. Motion to Remand (Doc. 11)
b. Motion for Abstention and to Stay Proceedings (Doc. 12)
c. See Proposed Scheduling Order attached.

7. COMPLIANCE WITH RULE 26(A)(1).

The parties propose the Court first rule upon Plaintiff's motion to remand. Because jurisdiction is a threshold issue, the Court should first determine jurisdiction before proceeding to other matters. If the Court denies remand, the parties propose the Court rule upon Plaintiff's motion to abstain.

If the Court's ruling on interlocutory appeal is that jurisdiction exists and mandatory or discretionary abstention do not apply, then the parties propose they exchange Initial Disclosures under Fed. R. Civ. P. 26(A)(1) no later than sixty (60) days after the Court's order ruling Plaintiff's motion to abstain. Initial disclosures due at this time shall be limited to only those matters relevant to class certification, which includes overlapping merits issues.

8. PLAN FOR DISCOVERY

A. The discovery planning conference (Fed. R. Civ. P. 26(f)) was held on Friday, October 21, 2016.

B. The parties propose the attached scheduling order, and the parties propose that the Court defer any further scheduling until after the Court rules on Plaintiff's motion to remand (docket no. 11) and, only if the motion to remand is denied, Plaintiff's motion to abstain (docket no. 12).

C. In the event ADR is ordered or agreed to, what is the minimum amount of time necessary to complete necessary discovery prior to the ADR session? ADR is not appropriate at this time.

D. Have the parties discussed issues relating to disclosure or discovery of electronically stored information, including the form or forms in which it should be produced, pursuant to Fed. R. Civ. P. 26(f)(3)(C)? Yes.

E. Have the parties discussed issues relating to claims of privilege or of protection as trial-preparation material pursuant to Fed. R. Civ. P. 26(f)(3)(D)? Yes.

To the extent the parties have made any agreements pursuant to Fed. R. Civ. P. 26(f)(3)(D) and Fed. R. Civ. P. 502(e) regarding a procedure to assert claims of privilege/protection after production and are requesting that the court include such agreement in an order, please set forth the agreement in detail below and submit a proposed order adopting the same.

The parties are conferring on an Agreed Protective Order.

F. Identify any other discovery issues which should be addressed at the scheduling conference, including any subjects of discovery, limitations on discovery, protective orders needed, or other elements (Fed. R. Civ. P. 26(f)) which should be included in a particularized discovery plan.

None.

9. ESTIMATED TRIAL TIME.

The parties request that scheduling for trial be postponed until after Plaintiff's motions to remand and abstain have been decided and, if the court retains the case, until after class certification has been decided.

10. BIFURCATION REQUESTED:

The parties agree that the Court should resolve the issues of jurisdiction, mandatory and discretionary abstention, and class certification before scheduling a trial on the merits.

11. POSSIBILITY OF SETTLEMENT: Poor.

12. SETTLEMENT AND ADR PROCEDURES:

A. Compliance with LCvR 16.1(a)(1)—ADR discussion: Yes.

B. The parties request that this case be referred to the following ADR process: The parties request that ADR with a neutral third party experienced in oil and gas matters be scheduled only after class certification issues have been resolved.

13. PARTIES CONSENT TO TRIAL BY MAGISTRATE JUDGE?

Plaintiff consents to trial by magistrate judge. Defendants do not consent to trial by a magistrate judge.

14. TYPE OF SCHEDULING ORDER REQUESTED.

Specialized, in accordance with item 6, above. Proposed Scheduling Order is attached.

Submitted this 25th day of October 2016.

/s/ *Rex A. Sharp*

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ATTORNEYS FOR PLAINTIFF

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ATTORNEYS FOR DEFENDANT

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[PROPOSED] SCHEDULING ORDER NO. 1

The parties have agreed to this order [1] and, there being good cause,

IT IS HEREBY ORDERED pursuant to Fed. R. Civ. P. 16 that the deadlines described below shall control until a ruling on the Plaintiff's motion for remand (docket no. 11) and, if the motion to remand is denied, a ruling on Plaintiff's motion to abstain (docket no. 12). All other proceedings in this case are stayed until the Court rules on Plaintiff's motion to remand and motion for abstention.

Event	**Proposed Schedule**
Defendants' Response to Plaintiff's Motion to Remand	November 3, 2016

[1] Plaintiff has moved to remand this case for lack of subject matter jurisdiction and, alternatively, to abstain based on statutory exceptions to jurisdiction under the Class Action Fairness Act. ECF Nos. 11 and 12. By participating in the procedural requirements of the Federal Rules of Civil Procedure and of the Court, Plaintiff intends no waiver of the contentions stated in the respective motions or their related briefing.

Plaintiff's Reply to Defendants' Response to Plaintiff's Motion to Remand	November 10, 2016
Completion of discovery regarding CAFA's abstention provisions	February 28, 2017
Plaintiff's Supplement to Motion to Abstain	March 17, 2017
Defendants' Response to Plaintiff Motion to Abstain	April 14, 2017
Plaintiff's Reply to Defendant's Response to Plaintiff's Motion to Abstain	April 28, 2017

The Court will enter a separate scheduling orders for class certification and a trial on the merits after ruling the pending motions.

IT IS SO ORDERED.

Dated this ____ day of October___, 2016.

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VICKI MILES-LaGRANGE
UNITED STATES DISTRICT JUDGE